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ABSTRACT

This monograph contains five presentations delivered during the course of an attempt made in November 1992 to amend the state constitution of Illinois in such a way as to make education a fundamental constitutional right. The effort failed to garner the 60 percent of the vote required to pass the amendment. These presentations made a strong advocacy case for the amendment's approval. The first presentation was given before a rural group that issued a legal challenge to the state school finance system. The second piece is a written statement presented to the Task Force on Illinois School Finance. The statement was based on reports from the task force and is the most specific to Illinois of all of the presentations in this collection. The third presentation outlines the broad philosophical arguments for making education a constitutional right. The fourth presentation explores questions about whether inequalities in spending at different schools makes a difference in the quality of education. The fifth presentation was given after the defeat of the constitutional amendment at the polls and the court challenge. It discusses the impact of the losses and national trends in education. Suggested readings and an appendix containing the status of school finance constitutional litigation are included. (JPT)

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INVICTUS
FIVE ADVOCACY PRESENTATIONS ON EDUCATIONAL FISCAL POLICY IN ILLINOIS INCLUDING MATERIAL RELATING TO THE ATTEMPT TO ESTABLISH EDUCATION AS A FUNDAMENTAL CONSTITUTIONAL RIGHT IN 1992

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March 1993

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
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This monograph is dedicated to Senator Arthur Berman and Senator John Maitland. Both of these Senators, one a Democrat and one a Republican, have championed the cause of public education in Illinois. They put their political careers on the line for the passage of the amendment to the Illinois Constitution which would guarantee a fundamental right to an education for every child in the state. In spite of some small and large defeats over many years, their zeal in the General Assembly is unconquerable. Their courageous efforts are hereby recognized with sincere appreciation.

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March 1993

Out of the night that covers me;
Black as the pit from pole to pole;
I thank whatever Gods may be,
For my unconquerable soul.
--William Ernest Henley, 1875

PREFACE

In November 1992, an attempt was made to amend the state constitution of Illinois which, had that attempt been successful, would have made it explicit that education was a fundamental constitutional right in Illinois. Fifty-seven percent of those voting on the amendment favored such a proposition; however, the amendment failed, because amending the constitution in Illinois requires a super majority of 60%. During the course of the amendment campaign, I made several presentations concerning educational fiscal policy in Illinois. A selection of those presentations comprises this publication.

The first presentation, "A Modified Julius Caesar: Act III, Scene 2," actually predates the amendment campaign. It was a second presentation made at Galesburg, Illinois, to a rural action group called, "The Voice of the Prairie." This group, no longer extant, was put together by James Nowlan, who was then at Knox College and, currently, is Director of the Illinois Taxpayers' Federation. This action group was instrumental in helping to bring about a constitutional challenge to the Illinois School Finance system styled The Committee v. Edgar, a case currently at the appellate level in Illinois.

The second presentation was actually a written statement given to the Task Force on Illinois School Finance. This statement was based upon a preliminary report of that group. The Task Force has since issued its final report, but some of the observations made in the written testimony on the preliminary report are still of importance to Illinois school finance. It is probably the most specific to Illinois of the presentations in this particular volume.

By contrast, the third presentation is the broadest and most philosophical in nature. Around the Center it became known as the "rubber chicken speech," because it was used so often in the campaign to amend the constitution. In one form or another it must have been given some 30 times or so. Often brief outlines of the arguments contained in this speech were circulated as campaign literature. A speaker is seldom a very good judge of audience reaction to his own speeches, but, to the degree that applause or comments after the speech are any indicator of "how things went," it would be my evaluation that this was the most well-received of the five presentations included here.

The fourth presentation was made to two sessions of a workshop convened during the amendment campaign by the Institute for Government at the University of Illinois. It concentrated largely on the "does money make a difference?" issue which had come up repeatedly in the course of the amendment campaign. This matter of the relationship of expenditure to output still comes up in most of the litigation, as recent decisions in Missouri and in North Dakota illustrate.

Finally, "Eulogy in a Country School Yard," is the presentation with the saddest note. This was given in the aftermath of the failure of the constitutional amendment in Illinois and after the motion to dismiss the Committee v. Edgar in that state had been granted. It also mirrors some relatively grim national commentary on the subject, not the least of which was the book by John Kenneth Galbraith entitled, The Culture of Contentment. It is unfortunate that we have to end on such a pessimistic note, but realism has always been a hallmark of the work at the Center and realism, at least in Illinois, does not dictate a cheerful prospect for achieving equal educational opportunity in this state, at least not for the foreseeable future.

There is redundancy in these presentation, because I wanted to make some of the points to every audience that "received the message." In the main, these essays stand as they were spoken.

As an Appendix, we list all of the constitutional challenges of which we have record at the Center. It is particularly interesting to note that fourteen states have declared that education is a fundamental constitutional right, while twelve states have declared that, per contra, education is not a fundamental right. The absence of a federal constitutional right to education was confirmed over twenty years ago in San Antonio v. Rodriguez. Still, the right to an adequate education is a deeply held value by most educational professionals and we can expect the war to establish this right to continue for generations, both in court and out of court. From time-to-time events may push the struggle to achieve equity out of the limelight, but there is documentation that this struggle in the United States has been going on now for well over a century. It will continue.

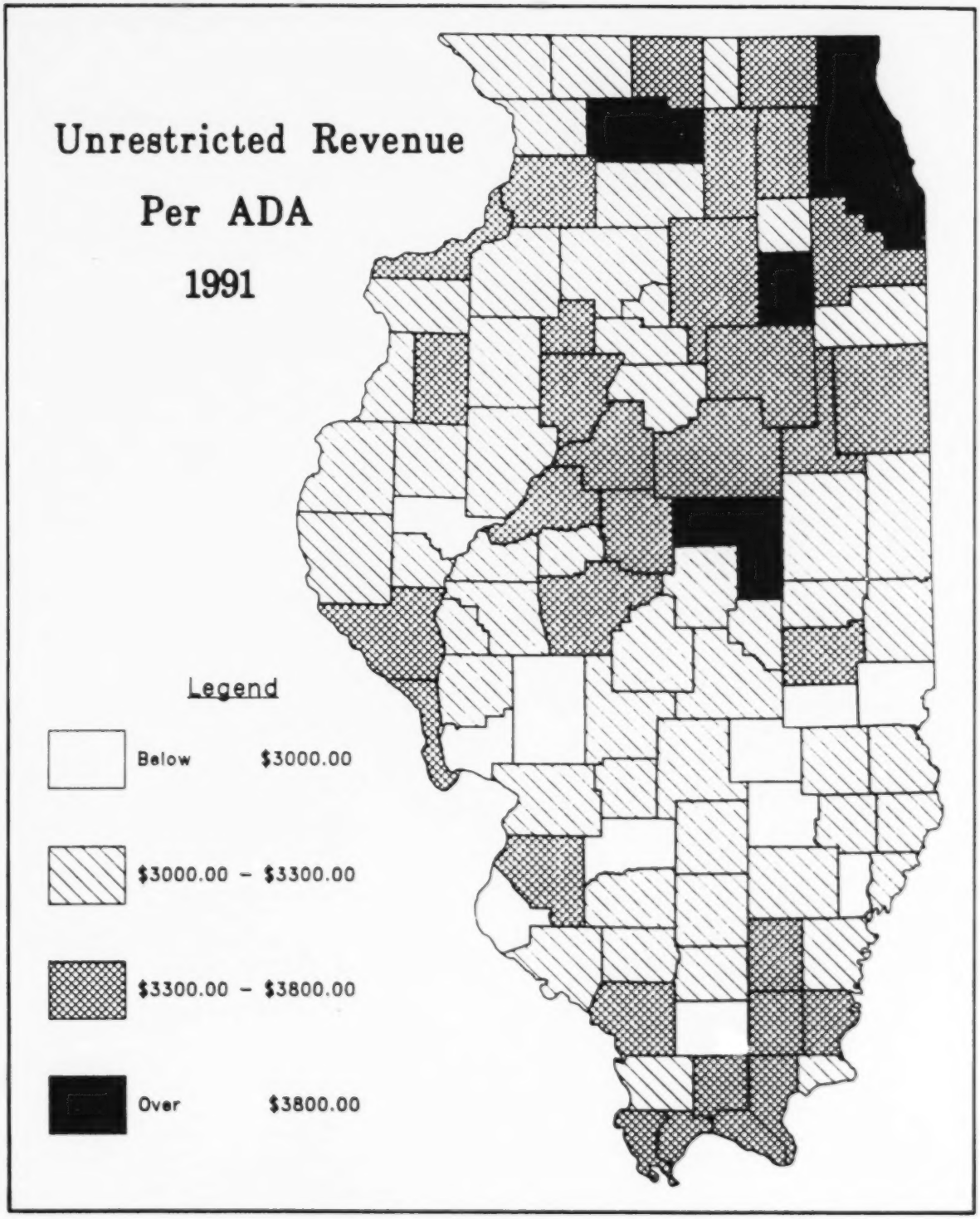
--Distinguished Professor G. Alan Hickrod
Illinois State University, Normal, IL 61761
February 15, 1993

A Modified Julius Caesar
Act III, Scene 2

Friends, Galesburgundians and countrymen, lend me your ears. I came to bury a school finance system, not to praise one. The evil that a system does lives after it; the good is oft interred with its bones. So let it be with this system. Nor have I need to praise this system. It has flatterers enough. The Special Attorney General, speaking on behalf of his clients, the Governor and the State Superintendent, in their motion to dismiss the constitutional complaint filed by The Committee for Educational Rights, have said that this system is a "progressive program" of state aid to local school districts. And the Special Attorney General, the Governor and the State School Superintendent are all honorable men. They really are, especially the State Superintendent who is walking a tightwire between legally defending the present system, while, at the same time, trying to achieve a major reform in the system. But, they are also very, vary badly-advised, honorable men. This system, which they now so stalwartly defend, can be shown to have become steadily more unequal since 1976. This system, which they now so stalwartly defend, can be shown to provide a base or foundation expenditure which is scarcely more than half of the average expenditure in the state. This system, which they now so stalwartly defend, can be shown to have glaring regional inequalities. The expenditure levels it provides for student in the wealthy, collar counties around Chicago may indeed be adequate for today's world, but the expenditure levels that the system provides for southern Illinois, for western Illinois, and for parts of south-central Illinois are not adequate in today's world. The maps on the following pages demonstrate, more than my humble words can ever do, the inequalities under which we labor and which are growing larger each and every year. Noble Galesburgundians, this system is not "progressive"; indeed, it can scarcely be called a "system."

But, the Special Attorney General, in his motion to dismiss, has done us a great service, although I doubt he has done his clients--the Governor and the State Superintendent--as great service, especially politically, for he stated flatly and without qualification in his motion to dismiss that there is no fundamental right to an efficient system of high quality education in this state. In support of his position, he claims that the "history and language of Article X, Section 1, make clear that the Constitutional Convention delegates did not intend to create a fundamental right." The issue of the intent of the constitutional convention of 1970 will doubtless be examined in some detail in the course of the present litigation. I would not attempt to pass judgment on that here; and, indeed, may not be qualified to pass judgment on that matter even though I was there and did participate in a minor way in those constitutional deliberations.

What is important is that the Special Attorney General has politically drawn a line in the sawdust. On one side of that line stands the Coalition for Educational Right under the Constitution, who claim that there is a fundamental right to an efficient system of high quality education; and, on the other side of that political line stand its opponents who claim that there is not a fundamental right to an efficient system of high quality education. Never was an organization better named than this Coalition. It is not at all an exaggeration to say that the Special Attorney General and his clients are now attempting nothing less than to gut the content of the education article, Article Ten, and leave nothing more than a smoking hollow shell. If they are successful, that would leave us with no educational rights at all under the Illinois Constitution; hence, we would have no need for a Coalition to defend what would then not even exist. The Special Attorney General and his clients are extremely frank about all this. I complement them for their candor. I like honest men, even if I profoundly disagree with them. In many places in the state's brief they state that nothing in Article Ten is to have "legal effect." Everything in Article Ten is hortatory. It is all merely "goals" that would be nice to attain, perhaps a little better than pie in the sky, but the language in the constitution, they allege, is in no way binding on the General Assembly. Fortunately, there are those of us in this Coalition who think otherwise.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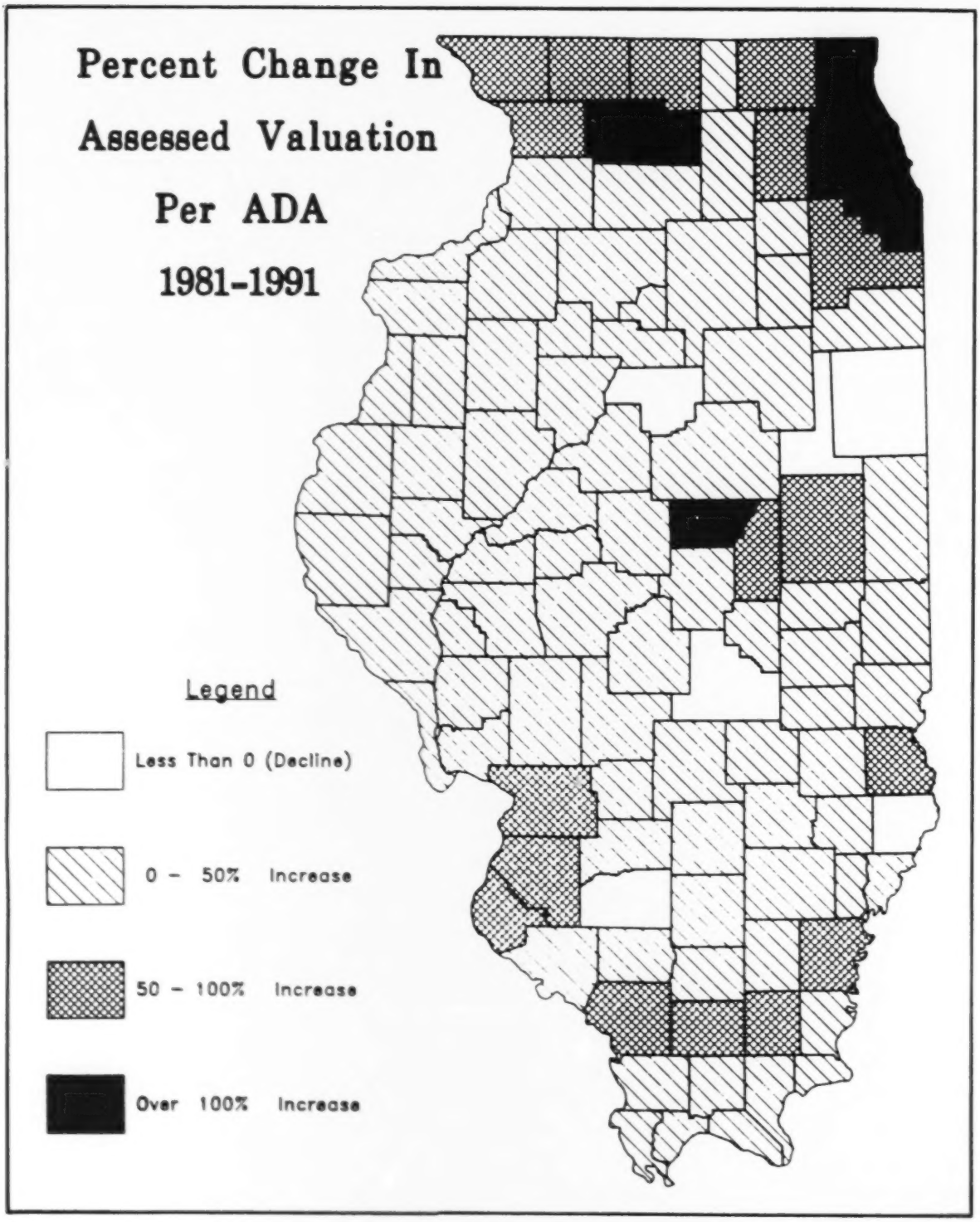
Percent Change In
Assessed Valuation
Per ADA
1981-1991
Legend
Less Than 0 (Decline)
0 - 50% Increase
50 - 100% Increase
Over 100% Increase

Now, this is a fight that cannot be lost. Even if I were to admit--and I do not so admit, for one moment--that a fundamental right to an adequate education cannot be found in the present Illinois Constitution, then I am totally convinced that we should replace the present Article Ten with a better education article, a new education article that makes that right very clear to one and all. Indeed, we have said from the beginning that the fight for an adequate education for all children will be carried on in the legislative halls, and in the executive branch, as well as in the courts. If, therefore, our adversaries are successful in their very unworthy task of gutting the education article, I believe we are duty-bound to seek a solution at the ballot box. That solution may take many forms, including not only a new constitutional article for education, but also the replacement of those elected representatives who will not stand up and be counted when the time comes to support a basic constitutional right to an efficient system of high quality education in Illinois.

It might seem to some that it is unfair to make the state's brief in support of its motion to dismiss into a political document. Perhaps. But I submit it is impossible to read that brief without clearly discerning a political philosophy which is certainly open to honest debate. Nowhere is this clearer than when the defendants argue that there is no obligation on the part of the state to correct the public effects of market-place decisions. I leave to my learned colleagues in the law the complicated discussion of whether or not "purposeful discrimination" has or has not occurred. There is certainly an abundant literature on that issue in racial desegregation cases. But, again, the defendants do us a service by pointing up such a key issue.

There can be little doubt that the growing expenditure inequalities we are observing in Illinois and in other states are caused by market forces and market decisions. While it is not true in all states, in many states the major force making for greater inequalities in educational provision between school districts is the growing regional economic inequalities found within the state. In a typical scenario, by no means limited to Illinois, what happens is that, around one or more major metropolitan centers, a band of "high tech" industry and commerce will develop, as well as a cluster or clusters of high-valuation residential property. Simultaneously, unfortunately, many rural areas of that same state may be undergoing economic decline and even depression. As these property valuations pull apart, with the passage of time, the expenditures per pupil also spread, because, in most of the states, the expenditures per pupil are still dependent upon the local property tax-base. Historically, or at least since the 1920's, the states have attempted to offset this growing disparity in educational provision by providing more state aid of an equalizing nature, usually from the yield of both a state income tax and a state sales tax. We have, indeed, tried to do exactly that in Illinois.

The basic problem is that this requires constantly-increasing state aid in order to offset the growing local property tax inequalities. It is a little like walking on a treadmill; as the treadmill speeds up, you have to go faster and faster to stay in the same place. Unfortunately, neither Illinois, nor a number of other states, can go faster, because their state revenues--either by design or by lack of economic development in the entire state--do not allow them to provide enough state aid to equalize the growing disparities between school districts. So, it is the market forces, themselves, that cause the fundamental problem. I believe the state's brief is dead on target in that area, and salute them for their keen perceptions of the central problems. Where honest men and women will differ, and differ strongly, is whether or not the state has any obligation to try to offset the problem of growing inequalities within the state,itself. Many will certainly argue that the constitution is superior to the market; and, if there are adverse consequences caused by the actions of the market, then the government must address those consequences, especially if one of the chief consequences is a denial of a fundamental right. Now, we end up in the same place since the defendants allege there is no fundamental right to

an education and the plaintiffs allege that there is a fundamental right to an education and that the actions of the market have denied that fundamental right to a significant number of children in the state.

In its brief, the state seems to regard the hundreds of school districts in the state as individual, sovereign consumers. Some of these, the Byrons and Seneccas of this world, can afford luxurious educational provision in this free and unrestricted market, while the Mt. Morrises of that same world can afford very meager provision, indeed. As was so clearly pointed out by a new best selling book by Jonathan Kozol entitled, Savage Inequalities, the problem is that the operation of such a free and unrestricted market is not consistent with the guarantee of fundamental rights under the constitution. The free market works just fine for a very large number of goods and services and the alternatives to the free market do not look especially good at the present moment in history; however, the free market system has never worked well in the arena of fundamental rights. Freedom of speech may not be bought; equal protection under the law has no price. Moreover, some of us believe that a free and unrestricted market does not work at all well for educational services, at least at the K-12 level.

But enough of the state's brief on its motion to dismiss. It is well-drawn and well-argued. While I disagree with its conclusions, I have no doubt it will serve to point up the issues very well. Because of it, we may look forward to a higher level of discussion on these complex issues.

I was asked to say a few words on school developments in other states. There have been a number of new constitutional complaints filed. In fact, we believe that, at the present time, there may be only nine states in the entire country without some history of this type of litigation. Our roster of attorneys of record who are active in this area now exceeds 80; and the list contains only those whose names appear at the bottom of the complaint. There will shortly be enough lawyers in this area on the plaintiffs' side alone to form a small national association. I suggest they call themselves the "Legal Friends of John Dewey," for reasons I will make apparent in a moment.

I wish to concentrate upon only one school finance development in Texas which I regard to be extremely important. For some time, now, some school finance analysts, including our new president of the Coalition, Fred Hess, as well as my distinguished colleague from the University of Illinois, James Ward, whom you will hear from later in the program, have stressed that, if the state cannot, or will not, provide the necessary new state aid from the income tax and sales tax to level up the spending of the low-spending districts, then the only remaining option was to share the existing property tax wealth in a more equitable manner. Several different proposals have been advanced. One is to split the existing property tax rolls between the state and local governments; that is, to put the state back into the property tax business from which it was extracted before the great depression. The Task Force on School Finance is considering such a "split roll" proposal which would call for a state-wide tax rate of $4.00 per hundred dollar valuation on commercial and industrial property and on mining and railroad. It is a courageous proposal and deserves serious consideration. Another alternative is to pass a school finance formula which would "recapture" wealth from the property-wealthy districts and send it on to the property-poor districts.

In the past, these provisions to share the property tax have not fared too well in other states. Wisconsin had such a provision at one time; as did Maine. Wisconsin lost its through a court decision and Maine, through a popular referendum. However, the time may well have arrived in which it will be useful to look more closely at the "recapture" notion in Illinois. The analogy with Texas is too close to overlook. As Judge Scott McGowen outlines in a remarkable lucid decision on the new Texas formula in Edgewood v. Mena, the situation in Texas did not admit of many alternatives. The Supreme Court of Texas had ruled unanimously that the

system of funding the K-12 school was unconstitutional; but the Texas legislature was unwilling to pass a state income tax; therefore, the revenues needed for the large amount of state aid that would be necessary to level-up the low-spending districts was simply not going to be forthcoming. There seemed to be only one avenue left open. That was to reorganize the school districts of Texas into larger units, roughly the equivalent of counties and educational service regions, for funding purposes only, not for other administrative purposes, and then to use some of the money raised by a mandated state tax rate within those newly-created taxing districts for equalization purposes.

What this means is that, when the mandated state tax rate is applied to an oilwell-wealthy district in Texas, raising far more than the foundation level in that district, then the excess revenue must be distributed to other school districts within the newly-created taxing district. Were we to use the new Texas school finance system in Illinois, when the tax rate was applied to Byron and the yield was greater than the foundation level, Byron would have to send some of that money to Mt. Morris. As a result, the tax rates on property would go up in Byron; the money would not stay there; and the hue and cry of "Robin Hood" would be heard from one end of the state to the other. Probably, Byron would be in court the next day testing the constitutionality of the new finance system, as is their undoubted right. They would be fighting an uphill battle, because the kind of finance system--as recapture system--has been found to be constitutional, at least at the circuit court level, in Texas. At the present moment, over 100 wealth Texas school districts do share their oilwell wealth with less fortunate districts. I suggest we can do the same with nuclear power plants and we can also make the system stick constitutionally. I refuse to believe that Texans are smarter than we are in Illinois, although I acknowledge that from the Alamo forward they may have more guts than we have to take on very hard decisions.

To my friends north of Interstate 80 in Illinois--if, indeed, I have any friends left in that part of Illinois--I know what I am asking of you and, in particular, what I am asking of your representatives in the General Assembly. It is very easy to say that we wish to "level up the low spending districts," but those dollars must come from somewhere to level up. You have long since guessed, and guessed correctly, that those funds to level up will come from your pockets. If the state income tax is increased, that will assuredly fall harder on those citizens north of I-80 than those south of that line. If a "recapture" mechanism is put in place in the formula, that will also fall harder on high property valuations in that part of the state. Even the split property tax roll notion will hit harder north of I-80 than almost anywhere else in this state, except, of course, in the isolated concentrations of nuclear power located in a scattered manner throughout the state. But I-80 is not the Rhine River, nor the Elbe, nor the Yalu; south of that line are also Illinois citizens and they have the very same rights under the Illinois constitution that you have.

In a real sense, the proper analogy is East and West Germany. You are West Germany. You are, to some extent, the victims of your own success. It is in your part of the state that you have counties where property taxation has increased over 100% in ten years. In other parts of the state, the East Germanies of Illinois, we have counties with absolute declines, no gains at all in property valuations over the last decade. Although you certainly should not be penalized for your success in this market economy, is it unreasonable to suggest that you have a moral, ethical, and perhaps even a constitutional obligation, to help those who have been less successful in the race for rewards in this society? It has been wisely said: "To whom much has been given, much shall be required." But, no matter how wisely said, politically, that may not be a particularly smart thing to say, if one expects to be returned to one's seat in Springfield. In my judgment, about the only honest advice that can be given to elected representatives north of I-80 is to await a decision for the plaintiffs from the courts, and then pick the least burdensome of the options which are intended to replace the system which will then have been declared unconstitutional. It is important to understand that in this matter there is no villain. The formula is not "bad"; no one is really out to "soak the rich"; no one is trying to redistribute the wealth,

at least for that goal alone; however, the market did create winners and losers, and the constitution does not recognize the losers, at least where fundamental rights are concerned. The problem is not that the market did not work; it just worked too darn well.

I would like to conclude on the somewhat broader issues of educational reform in the United States. Recently, I had the privilege of participating in a three-hour television program for the MacNeil-Lehrer organization which will appear next January under the title: "Education on Trial." It was filmed in court room number three of the City and County Building of Denver which is the same court room used for the Perry Mason dramas. The format was a legal one, complete with direct examination, cross examination, redirect, closing arguments, etc., although the rules of evidence were not very closely applied. Believe me, you have never lived until you have been examined on direct by a Harvard Law School Professor and cross-examined by a Berkeley Law School Professor before about a thousand hot television lights. I didn't have the courage to tell my cardiologist what I planned to do in Denver. What that experience sensitized me to, however, was the decline in credibility of "public schools" in the United States (called "government schools" in Great Britain). I really do believe, now, that we could be on the verge of losing the whole system. In short, we either reform the public system greatly, or we will no longer have a public system of education as you and I have known it. The final hour segment on the MacNeil-Lehrer special will debate not the financial system, which has been the subject of my remarks, but the broader question of whether the present educational system is so "fatally flawed" that it must be abandoned altogether.

What would replace it? Well, as you might expect, the critics are not of one opinion on that matter. But, the consensus seems to be a private educational system that is publicly supported. Some call this a voucher system; some call it a choice system. Gone would be the school boards and the school districts as you and I recognize them. In short, a market system would take the place of the public monopoly system that we currently have. The most far-reaching proposal of this nature is found in a book by Chubb and Moe, two researchers at the Brookings Institution in Washington, D.C. Parenthetically, I could not suggest two books of more importance for your reading in education than both the Kozol book, previously referred to, and the Chubb and Moe volume. What really interested me politically, however, was that this brave new world was not being put forward solely by the inhabitants of the right wing of the political spectrum. In fact, at the present time, one of the few operating choice systems we have in the United States, which allows public money to be used in either government schools or in private schools, is the Milwaukee parental choice system authored by Representative Polly Williams, a Black female Democrat from an all Black legislative district in Milwaukee. It is true that the choice system passed by the Wisconsin legislature has yet to undergo a final constitutional test, but to make the assumption that those who wish to "disestablish" the public schools in the United States come only from the right is to miss the mark considerably, these days.

Well, why not "disestablish" the public schools? Establishmentarianism never worked very well in religion, why should we think it would in education? Amy Gutman, in a third remarkable book, provides us with an answer to that question. Professor Gutman, following the lead of the great American philosopher, John Dewey, argues that, in any political system, the type of educational system and the type of government cannot be separated. It is an ancient and respected line of argument which goes back to Aristotle's famous treatise, The Politics. We cannot disestablish the public schools, because, as Aristotle argues, "common goals require common means." The chief aim of the public school system is civic in nature. Certainly, there are other aims, as well: education to make a living, education as a means to personal fulfillment, education for a healthy life, etc., etc. But, I think it must be admitted that private education could fulfill many of the aims of education other than the civic one. I, for one, would be hard put to argue that the public schools do a better job than the private trade schools, especially in many highly -technical vocational areas. The lack of funding has hit many public

vocational schools particularly hard. However, I strongly believe, that only the comprehensive common schools in the United States can produce the citizens of tomorrow who are accustomed to a pluralistic society in which they must rub shoulders with the children of the poor as well as the children of the rich, with children from many ethnic groups, and with the many problems of a densely-populated, urban-oriented republic. The sequestered, segregated, occasionally-snobby, private school will not and cannot, by the very nature of its structure, prepare a student for the challenges of citizenship in this very large and very complicated republic. In this republic the private schools have an important role to play. Not for one moment, do I question that. If you have noted the Harvard blazer badge I am wearing, you know that I put my money where my mouth is.

Let us be clear, too, that our call for a fundamental right to an adequate education is a call for the clear establishment of a civil right to end all civil rights. The Coalition believes that all other civil rights are dependent upon the right to an adequate education. None of the other civil rights are operative without an adequate education. It is useless to talk about free speech, or voting rights, or a free press, unless one has an adequate education to make operative those other civil rights. Effective civil rights presume a civil right to an adequate education. Although I am sure it is not the intention of the Special Attorney General and his clients to endanger the Republic, to deny that a constitutional right to education exists, will, ultimately, do exactly that. In his closing arguments for the MacNeil-Lehrer special, Professor Christopher Edley of the Harvard Law School points out--most effectively I believe--that, in an uncontrolled, free-market system, the rewards go to the strong and the efficient, not to the weak and the downtrodden. In some areas of life that may work; but, as Professor Edley says,"That is not America. That is a jungle."

Those of you who know me well know that it is almost impossible for me to give a speech without quoting someone. I have Winston Spencer Churchill for you, today. First to those 60-plus, brave Illinois school superintendents in the Committee for Educational Rights, who have had the courage to try to reform the funding system in Illinois, and, if I was right in my previous arguments, in the long run, to save the public school system, I can only think of the indomitable Winnie's tribute to the Royal Air Force: "Never, in the course of human events, have so many, owed so much to so few." To all of us here today, the more important message from Sir Winston came in his very last speech to Parliament. It was the first of March, 1955; he had delivered a long address on the importance of nuclear deterrents and the equal importance of maintaining the Anglo-American alliance far after the second world war. He turned and said this to both sides of the House: "The day may dawn when fair play, love for one's fellow mean, respect for justice and freedom, will enable tormented generations to march forth, serene and triumphant from the hideous epoch in which we have had to dwell. Meanwhile, never flinch, never weary, never despair." In like manner, I now charge this Coalition. Until the day dawns when the law of Illinois recognizes a fundamental right to an efficient system of high quality education, "never flinch, never weary, and never despair."

Suggested Readings

John E. Chubb and Terry M. Moe, Politics, Markets and America's Schools, Washington, DC: Brookings Institute, 1775 Massachusetts Ave., NW. 1990.

Kozol, Jonathan. Savage Inequalities, NY, NY: Crown Publishers, 1991.

Gutman, Amy. Democratic Education. NJ: Princeton University Press, 1987.

Harvard Journal on Legislation, Littleton, CO: F. B. Rothman and Company, 10368 West Centennial Road, Summer 1991.

THE AMENDMENT AND THE QUALITY OF EDUCATION

I have been asked to say a few words about the effect of the proposed amendment on the quality of education. To do that I think I must tackle head on the vexing question of the relation of cost to quality of education. In the world of ancient Scottish Law, which is partially derived from Gaelic traditions, there is a third decision not available to Sassanach (Englishmen). It is the verdict of "not proven" which is not quite the same thing as "not guilty." The Scots say it means, "You are free to go, but don't do that again." I believe the relation of cost to quality in education is "not proven." By that I mean that it cannot be proven one way or the other, that expenditures directly affect quality in the K-12 area. This is NOT, repeat NOT, the same conclusion as is drawn by my colleague Eric Hanushek. I feel the research designs are simply so weak in this area that NO policy conclusion can be drawn from them. In this I concur with another colleague at Harvard, Richard Murnane, who has come to that same conclusion.

Let me outline my many difficulties with the typical "production function" design. I have gone through this little exercise is some of the monographs of the MacArthur-Spencer series published by the Center for the Study of Educational Finance at ISU, but they bear repeating here. In the first place, the output of these equations is normally specified by some type of test score, often of a verbal or quantitative nature. Surely it is obvious that these test scores can capture only a part of the output of any school district or of any school building where the building is the unit of analysis. The typical "production function" model compares all the expenditures with only a part of the output. This is clearly a mis-specification of the model. A minority of these models do use "instructional expenditures," rather than "current operating expenditures," and that is an improvement, but one still is not comparing the relevant input with the relevant output. The models used completely ignore outputs in the areas of vocational education and in the areas of fine arts, foreign languages, physical education, etc. All of these take goodly portions of the current expenditures of a school district, but the models fail to include them on the "output" side of the equation.

Second, the "production functions" are fatally flawed relative to the independence of variables on the input side of the equation. A statistical assumption in linear or even curvilinear regression is that the prediction variables are "independent." There are two crucial variables that are NOT "independent" of one another--expenditure per pupil and the socioeconomic background of the pupil. A rule of thumb among statisticians is that when variables exceed .30 in a simple correlation matrix, the assumption of "independence" is suspect. Almost always the relationship between a socioeconomic variable, such as the median family income of a school district, and the operating expenditure per pupil exceeds a positive .30. The reason is simple enough. Nowhere in the USA are there high socioeconomic areas which have low expenditures per pupil. There are a few low socioeconomic areas with high expenditures per pupil in our large central cities, but the large central cities constitute a special case to which I will return later in these remarks. The bottom line is that what society has joined together no statistician may render asunder.

Third, these production models are overwhelmingly linear and additive, and we know that relations between cost and output are often curvilinear and multiplicative. Why we persist in using these overly simple computer programs is not explicable to me. I am old enough to remember when we used curvilinear and multiplicative regression models worked out on desk calculators. I even published some of those myself, around the time of the Fall of Rome, so I know they can be applied in this area. We have not gained very much in educational finance by the mindless application of the canned step-wise linear regression computer programs to any and all areas of education. As a practical application of this, consider that some research suggests that money does make a difference in poor schools, but less so in wealthy schools. If that is true, all of our linear production functions are mis-specified, because few of them are non-linear relative to wealth.

Fourth, these production models are usually at the wrong level of generalization in education. By that I mean they are usually done on district data. There are some to be sure affected at the building level, and even some at the individual student level, but they are in a distinct minority. The measurements taken at the district level are far too crude to reveal much relationship between costs and outputs. Part of the problem here is that the test scores are often available at the building level while the costs are only available at the district level. We can and we should correct this misfit between the reporting levels of output and costs.

Fifth, the cost variables are not specified in sufficient detail to allow one to fit these costs to the appropriate output. This is a point made in some detail by Allan Odden and Larry Picus. Clearly, those of us in educational finance and in school business management are to blame for this deplorable situation. In spite of decades of admonitions about program budgeting, we still do not collect costs by program areas at the state level. Therefore, even at the district level, we do not have the costs broken into categories that would be meaningful in true "production functions."

Sixth, and finally, the standard production function design pays far more attention to variables that cannot be controlled by local school district boards and their administrations than to variables than can be controlled by those boards and their administrations. Could it be that this is a candid admission by the econometric model makers that, unlike private industry, there simply are not that many variables that are left to the discretion of the administration to manipulate? One suspects the answer is "Yes." That puts all these cost-effectiveness models in a twilight zone. One must have viable treatments or options upon which to compute the costs and the effectiveness of the management alternatives, otherwise the entire logic breaks down.

For these and other reasons I do not believe that either the courts nor the legislature should rely on the present input-output studies in education. I am not opposed to them, per se; I hope that, with the passage of time, we can correct the six problems and any others that I may have missed. In the meantime, we do know the relationship between costs and other inputs. There are a host of studies, some conducted the Illinois Board of Education, which relate expenditure per pupil to various aspects of the service level available to students. Unfortunately, even these studies are flawed since they often are restricted to variables easily collected--like the experience and training of the teachers--which have never been shown to have high correlation with output variables. Information on the curriculum side is very crude. We can determine the number of college advance placement courses and the number of advanced math and science courses available to a school district, but not much more. As far as I know, we have yet to complete a state-wide census of the availability of micro-computers to children in a given district. Still there is enough evidence available to say with considerable finality that higher expenditure districts have higher service levels and lower expenditure districts have lower expenditure levels. If that is the case, we can look at the low expenditure level districts and try to determine how much is needed to raise them to an "adequate" level of service.

Unfortunately, as professor James Gordon Ward, of the University of Illinois, and others have shown, the concept of "adequacy" is just as tough to handle as is the concept of "equity." Leaving the full exposition of this adequacy matter to Jim Ward and others, let us accept for the sake of the argument today that the Task Force on School Finance has correctly determined that an "adequate" education in Illinois ought to cost about $4,000 per child. It is important to note that this is not $4,000 per "at risk" child; this is just $4,000 for a normal child. Our present foundation level is around $2,600; therefore, we are talking about closing a gap that is roughly $1,400. Some of this gap is primarily a matter of geographic cost of living differences. Thanks to the efforts of another fine scholar at the University of Illinois, Professor Walt MacMahon, we have an accurate estimate of just what those geographic cost of living differences are in Illinois. On the MacMahon scale, an index of one means that the child is living in a county that has a

cost-of-living equal to the state average. Let us assume that the $4,000 child is living in Jo Daviess County, which has an index of one and is in the extreme northern part of the state. Let us further assume that our $2,600 per child is resident in Pulaski County which is in the extreme southern party of the state. We can then reduce the expenditure gap by 14% and credit that to the cost of living difference between Jo Daviess and Pulaski Counties. We are still stuck with a $1,200 dollar difference in service levels.

We know from the evidence prepared for the complaint in the Committee v. Edgar that there are many, many school districts in Illinois with out-of-date textbooks, out-of-date maps, computers that were state-of-the-art about two decades ago, "science labs" that have no running water or electricity, etc., etc. My contention today is that we could buy an awful lot of maps, books, and even computers with that $1,200. However, not much of this new "quality" would be needed north of I-80. The fact is that there are very, very few schools in the northern part of this state which are short of the Tasks Force's figure of $4,000. By the Task Force's own definition, therefore, the schools in the northern portion of the state, particularly in the collar counties, already have "quality" education. It follows, then, that it is the rest of the state that is not "adequate" and it is the rest of the state that will benefit most from this amendment. I am coming to the end of my brief remarks, because you asked me to speak to the relationship of the amendment to quality education, not to the very difficult political task of passing this amendment. But I will venture one suggestion. It is better to remind the good citizens north of I-80 that they are responsible for education throughout Illinois as well as in their own district. It is better to be honest with them and to appeal to their civic duties than to suggest that they will gain greatly from the passage of this amendment.

Finally, let us consider the matter of "at risk" students. It may be only my own interpretation of the first sentence of the proposed amendment, but I believe we are addressing the children at risk problem when we say, "A fundamental right of the People of the State is the educational development of all persons to the limits of their capacities." In Abbot v. Burke, a New Jersey supreme court judge clearly said that that state had a constitutional obligation to provide funding for special educational needs in excess of the funding considered adequate for children without those special educational needs. That is what I think we mean in the first sentence of the proposed constitutional amendment. Interpreted in that fashion, passage of the amendment would place a constitutional base behind the financial assistance not only of socio-economically deprived children, but also of physically and emotionally disabled children. We provide for those children now by statute, but this would place a constitutional basis behind that provision for special education.

No constitution is ever self enforcing. It is the duty of the courts to both interpret and enforce whatever the people decide upon on the first Tuesday in November. However, I believe that the proposed amendment will increase the quality of Illinois education, to the extent that we can observe and measure that elusive concept of "quality" and I urge your support of the amendment.

STATEMENT FOR THE ILLINOIS TASK FORCE ON SCHOOL FINANCE
October 2, 1992

My name is George Alan Karnes Wallis Hickrod and I am the Distinguished Professor of Educational Administration and Foundations at Illinois State University. I am also Director of the Center for the Study of Educational Finance at ISU and Past President of the American Educational Finance Association. For nearly a quarter of a century, I have had the pleasure of testifying before the General Assembly of the State of Illinois concerning public policy matters related to educational finance. During that period of time, I have had the satisfaction of seeing some of the policies I have supported passed into law. I have also had the disappointment of seeing a good deal of the policies that I supported NOT become law. But, I have never been ignored, despite the fact that I am not an elected official; and, therefore, represent no constituency other than myself. For that courtesy I shall always be deeply grateful.

I come before you once more for a dual purpose. First, I wish to state, yet again, the general equity problem which has sorely troubled us for so many, many years and to state the only solutions to that equity problem that I have been able to discern after more than thirty years of studying this problem. In the second part of my remarks, I shall then turn to the specific recommendations outlined in the Preliminary Report of the Illinois Task Force on School Finance and respond to some of those recommendations.

A. The Equity Problem in K-12 Education and Its Solution

Nearly seven decades ago, before most of the people in this room were even born, Robert C. Moore and Lester R. Grim wrote an article in the American School Board Journal entitled, "Inequalities in School Opportunities in Illinois." In that article of nearly seventy years ago, Moore and Grim wrote, "Why do these great extremes in financial ability exist? That geographic differences help to account for wide variations in property valuations is, of course, true. Yet the State, in order to provide for its own future welfare, must see to it that geographic limitations do not--MUST NOT (emphasis in the original)--handicap its future citizens in the securing of a good common school education; the State must see to it that its future electorate is well-trained in the interpretation, the understanding, and the solution of social and economic questions thrown out for decision before democracies jury--ALL men and women." The state of Illinois has obviously not heeded the warnings of Moore and Grim and today geographic limitations handicap young citizens to an extent that Moore and Grim would not have believed possible in their day. Why, then, have all of us failed so miserably, over the last seventy years? And I do mean ALL of us--Representatives, Senators, Governors, and, assuredly, Professors.

We failed because we stubbornly persisted in funding K-12 education primarily on the basis of a local property tax. In the early 1930s, Professor Henry Morrison at the University of Chicago correctly described this method of public finance as, "appropriate for horse and buggy days." If it was antiquated in the 1930s, it is assuredly more antiquated now. But funding the common schools on the basis of the local property tax is even more dangerous than men like Moore and Grim and Morrison believed. What those men did not know--and they could not know since longitudinal studies where not then available--was that this disparity in property valuations between school districts would grow wider and wider with the passage of time; thus, forcing the expenditures per pupil to also grow wider and wider as time passed. Men and women of that generation knew that there were inequalities between school districts, for a certainty, but they did not know that those inequalities would grow greater as time moved on.

We know now that the heart of our equity problem lies in the fact that parts of Illinois have been blessed by great economic development, while parts of this state have been cursed by economic stagnation. There are counties in this state with over 100% growth in property valuation per pupil and there are counties in this state with actual declines, no gains at all, in property valuation per pupil over periods as long as ten years. In general the prosperous part of this state is north of I-80 , especially in the counties contiguous to Cook. On the other hand, the economically depressed areas are more scattered. They are often found downstate with a heavier concentration than is usual in the west, the center south, and the deep south. They are also found in some property weak suburbs near the central cities. A combination of high-tech industrial development, residential property speculation, and commercial development has driven the property valuations, the property taxes, and the educational expenditures, to all time highs in that favored portion of the state which is north of I-80.

To be sure, there were some actions that the state could have taken to prevent this disparity in expenditure levels from widening. First and foremost, the state the could have raised the foundation level in the general aid formula by about $200 each year, rather than the $100 that it did raise it for the last 15 years. The raising of the foundation level has been uneven. In some years, there was no raise at all in the foundation level; and, in a few years, there was the $200 or $300 that was needed to do something about the equity problem. It is very interesting to note that, if the General Assembly had been raising the foundation level by $200 dollars each year for last 15 years, we would now have the $4000 foundation level which the Task Force has stated is an adequate level of funding for education. I most heartily commend the Task Force for calling for a $4000 foundation level, but it should be pointed out that the Task Force is really simply asking the General Assembly to do what it should have been doing for the last 15 years. To put it very simply, we needed to double the amount of state aid to school districts if we wanted to keep the gap in expenditures per pupil from widening between school districts. To do this the state would have had to raise state taxes--which is where the rubber meets the road.

To solve the equity problem, we must move away from the local property tax and over to state income and sales taxes to fund K-12 education. Your Chairman, Senator Arthur Berman, a most knowledgeable man in this area, once ask me if the equity problem could be solved WITHOUT an increase in state taxation. In my judgment, the answer to that difficult question is fundamentally "No." The equity problem cannot be solved without an increase in state taxation. As long as we depend upon local property taxation to support K-12 education, the disparity between school districts will simply grow and grow. Presently, we are looking at ratios of 3 or 3.5 to I in terms of high-spending to low-spending. In a few year, we will be looking at ratios of 6 or 7 to 1, high to low spending--and that is even after the removal of some "outliers"--if the state does not take a bigger share in the support of K-12 education.

It is true that there are some other actions that could help the equity situation, but often, in these cases, the cure is really worse than the disease. One could, for example, expand to the whole state the property valuation increase cap that was recently applied to counties adjacent to Cook. This is a form of hobbling richer districts so that their expenditures will not increase as their property valuation goes up. We do not know what the fate of that law will be in the courts, but, if this is not "leveling down," it is the next thing to it. That law was passed in the name of "property tax relief," but the effect is to prevent wealthy districts from utilizing their increase in assessed valuations for the purposes of their schools. Many of us oppose this law, because we fundamentally believe in leveling up, rather than leveling down.

Another really drastic solution would be to abandon local funding of K-12 education entirely and go to "full state assumption." Under that model, no money at all for education would be raised at the local level; all the dollars for the common schools would come from the state level. This model is tempting, and, in some respects, this is a "final solution" of the equity problem. It is also a solution that has been espoused in the past by a number of people in Illinois.

Professors Henry Morrison at the University of Chicago and Professor Alan Thomas of that same institution held that this was the ultimate, final solution. Full state assumption is also favored by my colleague, Professor James Gordon Ward at the University of Illinois. A variation of this, namely full state assumption of the costs of the elementary grades only, has been advanced by the late Professor Walter I. Garms and by my colleague at Illinois State University, Robert Arnold. I well remember chairing a "Blue Ribbon Committee," during the administration of Superintendent Bakalis, nearly twenty years ago, which worked for a year and a half on school finance matters and which ended with the majority on the committee recommending exactly this solution to the equity problem; e.g., full assumption of costs of K-12 education by the state. However, we are the products of our culture and our tradition, and I believe the continued joint local and state "partnership" funding of education is apt to continue for the foreseeable future. Also, I did not see in the early 1970s, and I do not see now, where the large amount of state dollars would come from to drive a full state funding system without a major re-entry of the state into the property tax field. It is true that a state-wide property tax was the means by which education was funded in the 19th century in Illinois, together with limited local property taxes, but, as recent deliberations of the Task Force have shown, putting the state back into the property tax business is no easy matter.

The state could also have make some progress on its equity problem by reorganization and consolidation of school districts. However, only limited progress can be made by this technique. On occasion, rich districts are found side-by-side with poor districts, and mergers would help the equity problem. However, in most metropolitan areas, many poor districts and rich districts are geographically clustered together and mergers simply create large rich districts and large poor districts, constituting little help with the equity problem. Reorganization and consolidation are far more helpful in reaching a different school finance goal than equity, namely economic efficiency.

My last observation on these broader themes--before I comment on the specifics of the Preliminary Report--will demonstrate my belief that honesty is, indeed, the best policy. It will also demonstrate vividly that Distinguished Professors do not have to stand for election, anywhere. Not only do I believe that there really is no solution to the equity problem without increased state taxes, I also believe that there is no solution to the equity problem without an increased transfer of resources from areas of the state where those resources are to areas of the state where they are not. By raising the funds needed for increased state educational aid primarily through the vehicle of the state income tax, one does take funds from income rich areas of the state and redistribute those funds to poorer areas of the state, thus raising cries of "Robin Hood" and other less laudatory appellations. If we have not seen before, now, we can clearly see why the educational equity problem has not been solved for over seventy years. It has always been difficult--and it always will be difficult--for members of the General Assembly from relatively affluent areas to defend fiscal policies which take funds from their own constituencies and send them to constituencies that are less fortunate than themselves. It is hard to stand for re-election on such a fiscal policy in the constituencies north of I-80. There may be only one ultimate argument than can help these members of the legislature that stand for the General Assembly from more affluent constituencies. John Donne wrote that "No man is an island." I-80 is not the Rhine River; there are not foreign countries on either side of it; and there is no way for the collar counties to declare a civil war and secede from the rest of this state. If the less fortunate areas of the state continue to collapse, if small rural towns continue to dry up and blow away, if urban ghettos continue to fester and rot, then, sooner or later, these "third world counties" within Illinois will take down the prosperous suburbs with them. In the longer run, either most of us in Illinois prosper, or no one in Illinois will prosper. So much for the broader themes, I now must turn to some specifics from the Task Force Report.

B. Reaction to Specific Recommendations in the Preliminary Report

I wish to commend very highly the excellent work of the Task Force and, especially, the contributions of its competent staff. In particular, I believe the work of Dr. Hinrichs and Mr. Evans has greatly advanced our knowledge of school finance. I do have some basis for making this judgment, having served on no less than five special purpose commissions or committees on school finance in the last quarter century in this state. I believe the recommendations of this group will stand up well when compared to the other five special commissions. The reactions below are listed in no special order; I simply discuss them as they come to mind.

First, with regard to the cost-of-education index--that is, the addition of the abbreviated McMahon Index to the grant in aid system--I support that addition. I do so in the full knowledge that it will send more state dollars to more affluent areas of the state and, therefore, at least on the surface, appear to worsen the equity problem rather than help it. However, such an index is "equitable" in a broader sense because education is more expensive in those areas shown by the McMahon Index to have high values. Also, if I have been right about the great sacrifices that will have to be made by the more affluent parts of the state to solve the larger equity problem, then it seems only right and just to return some state dollars to those affluent areas of the state which suffer from higher educational costs. There are very few ways in which the state can find a good rationale for sending state dollars back to the affluent areas which generate them. A geographic cost-of-education is one such way, and I think it should be used.

As to the recommendations relative to the general grant-in-aid formula, I have some trouble with the use of the actual operating tax rate in the proposed formula. I would prefer a return to the fixed tax rate and I would make that fixed tax rate mandatory on all school districts as it was in Illinois from 1927 to 1973. The rationale or theory behind a fixed mandated tax rate, paid by all school districts, is that both the locality and the state must contribute to the foundation level. Theoretically, there is some clearness to an alternative notion which would have only the state, and not the locality, charged with the support of the foundation level. I advanced that very notion in a paper prepared for the Citizens Council on School Problems, a couple of years ago. However, the cost to the state of such a model appears prohibitive, and I suspect we are stuck with the "partnership" notion of funding the foundation level for some time to come.

I would NOT make the tax rate in the formula merely a "calculation" rate. As the Preliminary Report correctly points out, when that is done, there is no way to ensure that a foundation level actually exists for all K-12 students in Illinois. This mistake has been made in other states and they all have the same problem of some school districts falling through the "safety net" that is supposed to be the foundation level. A simple Strayer-Haig formula--of the type that Illinois had for just short of half of a century--with the foundation set at $4000, would go a long way to solving the equity problem in this state. If the required or mandated tax rate in that type of formula is set relatively low, at least some relatively wealthy districts will find that they still qualify for state aid; therefore, political support for such a formula may be more easily obtained. Use of the actual tax rate in the form recommended by the Preliminary Report is the obverse of the use of that same rate from 1973 to 1980 in the general grant in aid formula in Illinois. During that seven year period, we had a "reward for effort" approach to state funding so that districts levying higher tax rates received both more local and more state support. Use of the actual tax rate in the form proposed here, however, would be "punishment for higher tax effort," so I fail to see the rationale for such a distribution system.

Perhaps such a mechanism is intended to effect property tax relief. If property tax relief is intended, there are more straightforward ways to achieve it. In my judgment, property tax relief is needed, but to try to achieve property tax relief through the mechanism of the educational general purpose grant-in-aid formula is awkward, at best. I would much prefer to

see a separate pool of funds established for the explicit purpose of property tax relief, and then have those funds distributed on the basis of the school districts with the highest rates having greatest access to these funds. Such grants should require a straight substitution of state money for local money, thus assuring property tax relief and that none of the funds in this particular pool would be used for new monies for the schools. In short, I think it is much better to handle new monies for the schools one way and property tax relief another way, and not get the two purposes and the two pools of funds confused. In fact, I think that property tax relief is so essential that I would be prepared to stand down somewhat on the $4000 foundation level in order to establish this second pool of funds for the specific purpose of lowering high school property taxes. In Illinois, many relatively wealthy school districts also have high property tax rates. The relation of the property tax rate to wealth is a complex one and it will be found that a pool of funds for property tax relief will go to both rich and poor schools. Like many observers, I strongly suspect that property tax relief is the price that must be paid for higher funding for the schools. If that is true, then let there be two separate and distinct pieces of legislation that make their way as a twin operation through the General Assembly.

Finally, I would like to address two items which may have escaped the Task Force's attention; or, perhaps these are items which simply have not been addressed as yet on the agenda. In 1969, Ben Hubbard and I issued the first of many joint communications to the old School Problems Commission. In that testimony, we argued that property valuations alone were not a very good measure of the wealth of a school district. We have not changed our minds in all of those years. In fact, property valuations alone are even a poorer measure of the wealth of a school district, now, than they were in 1969. In about a year, the personal income data on each school district will be available from the 1990 federal Census of Population and Housing. We believe that, at that time, the General Assembly should again start exploring the possibility of using both income and property valuation to measure the wealth of a school district for state aid purposes. Several states have a long history of using general state aid formulas based upon these joint indexes of income and property valuations. There should be no shortage of models to explore. New computer software, some it developed by Dr. Hinrichs, should make this task even more efficient. Mention of the 1990 federal census of Population and Housing also recalls to mind that a new measure of Chapter One eligible pupils will soon also be available. When these new federal census measurements became available in the early 1980s, they caused a significant shift in both federal and state aid within Illinois. At least, they would have caused a significant shift in state aid had the General Assembly not taken some specific actions to handle the situation. The General Assembly now needs to prepare, again, for a similar impact of new federal census information in late 1993 or 1994. It is likely that the City of Chicago and other large urban units will have an especially strong interest in the financial affects of these new census figures.

Last, but not least, abundant research at Illinois State University and elsewhere has shown that the impact of the percentage of children living in poverty in a school district is not a linear phenomenon. Specifically, when the percentage of children living in poverty becomes greater than 50% in any school district, then the effect on test scores and other output measurements is much greater than when the percentage of children living in poverty is less than 50%. Thus, considerably more funds are needed in majority poverty impacted school districts. This phenomenon can be addressed in several ways. One way is to change the weighing in the general grant in aid system to provide a higher weighting when the poverty percentage goes over 50%. Another is to provide special categorical assistance for districts which are over 50% in poverty. It should be pointed out that not all of these majority poverty impacted districts are found in urban areas. There are many rural poverty pockets in Illinois and these need added assistance as well as the urban poverty pockets. The Task Force needs to explore this matter in greater detail.

C. The Amendment and the Court Case

I have been rather candid in this paper in a number of places. I might as well conclude on that note, as well. I happen to be a strong supporter of the education amendment which will be on the ballot in November. Also, I have had the privilege of debating some members of the Task Force who feel quite otherwise about the Amendment. It is well known that I have supported the constitutional challenge in the Committee v. Edgar. I view both of these efforts as attempts to move the legislature to a solution of the equity problem that I have described in the first part of this statement. I honestly believe that both the Amendment and the court case will assist the Task Force in seeing its recommendations through the General Assembly. It would certainly have been much easier, if the legislative branch had simply moved to solve the equity problem. Then, there would have been no need for either a court case or an appeal directly to the people. But that was not to be. We simply did not make any progress on the equity problem for 15 years. Americans are not particularly well known for their patience; therefore, first the courts, and now the people have been called into this area of public policy. It is important to note that only the American system of government could have allowed that to happen. It could not, for example, have happened under present forms of Parliamentary government.

When the Baron de la Brede et de Montesquieu first proposed a system of divided power between the executive, the legislative, and the judicial in his famous treatise, De L'Esprit des Lois, in 1748, many of his readers said it would not work. They claimed that such a checks and balance system, such a system of balance of power, could not be created; and, if somehow created, such a system would not last. At the very least, they believed that he had badly misinterpreted the English system of limited government which he professed at the time to be explicating. In this country, however, we have made such a divided governmental system work for over 200 years. It is admittedly unique in the world, and it may not be possible to create such a fractionalized system of government any other place. However, I see nothing whatever wrong with putting the blind Baron's hypothesis to the test one more time in school finance. The people will speak on school finance and, particularly, on the equity issue on November 3rd. The courts will speak, again, on this issue not long thereafter. With the help of the people, and with the help of the courts, our legislature will, I am sure, finally find its way out of this ancient dilemma; and we will not have to wait another seventy years, for yet another report, to point out the glaring disparities in provision between K-12 school districts. At least that is my faith and that is my hope.

I thank this worthy body for its kind attention, for its courteous reception, and for listening to me one more time. I do wish them well in their future labors.

AN AFFIRMATIVE CASE FOR THE AMENDMENT
October 1992

At your kind invitation, I appear today in the role of an advocate. I am an advocate of the constitutional amendment which will appear on the ballot on November 3rd. In the time you have allotted to me, I will outline what I believe to be sound fiscal, legal, and philosophical reasons why you should also be advocates of that proposed change to our state constitution. Since this is the "affirmative case," I will not make the case for the other side, but I will be pleased to stay after my remarks and attentively hear the rebuttal of any in the audience who disagree. I learned, many years ago, that in these complex public policy matters, honest men and women will differ.

Let us first look at some fiscal facts since I believe the need for this constitutional amendment arises in those financial facts. I promise to keep this section mercifully short, however, since I am very much aware that chewing on educational financial facts is not a dish to everyone's taste. Over three decades in universities has convinced me that "food for thought" only occasionally carries with it the appeal of "food for the stomach," and that I act on this conviction is apparent from my physique.

If we look first at the percentage increases in state revenue per pupil for K-12 education for the period between 1970 and 1990, it will reveal that Illinois ranks 43rd of the 50 states, not a particularly good showing. This is in stark contrast with Ohio which is 3rd in the nation, Indiana which is 9th in the nation, and Iowa which is 10th. When we compare the percentage increase in state educational revenue with the percentage increase in per capita income--this particular ratio is a very common measure of state fiscal effort for education--we find, again, that Illinois is 43rd in rank. Some of our neighboring states in the mid-west do much better on fiscal effort than does Illinois. Ohio is first in the nation on this measure of state effort for K-12 education, Indiana is sixth, and Iowa is seventh. What all this tells us is that, through time, Illinois has exerted a very, very poor state fiscal effort for K-12 education. The assertions of politicians on both sides of the aisle to the contrary not withstanding, the fiscal facts simply do not support the often-made claim that educational spending is a priority in this state. We must also conclude that whoever has tried to be the "education governor" in the last twenty years, either Democrat or Republican, just didn't quite cut the mustard. My own opinion is that Richard Ogilvie, a Republican, was the last man who could really claim to be an educational advocate and that was many years ago.

It is true, however, that the ranking of Illinois on school support, at one point-in-time, depends very much on the statistic you use to develop that ranking. The very best showing for the state that you can obtain is on simple expenditure per pupil, and the most recently available data on that statistic shows the state very near the national average in per pupil spending. However, if adjustments are made for cost-of-living differences between states and if the expenditures are not per student, but per capita, then Illinois sinks down to the bottom of the distribution. What is alarming here is not so much the current ranking, although that is mediocre at best, but, rather, the change in rank order over time. On one of these measures, Illinois falls from 7th in the nation to 44th in the nation, over a short, ten-year period of time. But, I wish to be fair and objective about this, and it must be pointed out that Illinois is not a Kentucky. When the recent successful constitutional challenge of Rose v. the Council was brought in Kentucky, the plaintiff school districts argued, with a great deal of data to support them, that Kentucky was not adequately funded relative to other states. At least in my judgment, that identical case cannot be made in Illinois; however, a case can be made that both the growth in revenues for education and the fiscal effort for education, over a long period of time, has not been good in

this state; and, more importantly, that, at least in terms of overall tax effort, there is no evidence of excessive tax burden for education in this state. I shall return to the taxation matter later in my remarks.

Others and I have spoken so much on equity matters that I almost hesitate to take up time with information on that particular subject. You all know from your newspapers of the outrageous differences in spending between Illinois school districts, six-to-one in some cases. If you have read Jonathan Kozol's outstanding and best-selling book, Savage Inequalities, you know what those statistics mean in human terms. At the Center for the Study of Educational Finance at Illinois State University, we have conclusive proof that the disparity in spending between school districts has widened progressively since about 1976. For a short period of time in the early 1970s, progress was made in narrowing the gap between the high-spending and the low-spending districts. In very recent years, for elementary districts only, there has been a slight narrowing of the gap in expenditures per pupil.

However, the gap between the high-spending districts and the low-spending districts is much, much greater now than when the constitutional convention looked at this same subject in 1970. One wonders, if the framers of the 1970 constitution could have known that, nearly a quarter of a century later, the equity situation would have been so much worse, whether that fact would have influenced their deliberations. Certainly, the voters this November must be told of these increasing inequalities, and it is hoped that knowledge will influence their judgment of the value of the proposed amendment. Let us be clear that this amendment is intended to provide a safety net for the lower spending districts. It is intended to see to it, once and for all, that no child in Illinois is provided with less than an adequate level of educational goods and services.

We also know that, while there are several reasons for these increasing expenditure inequalities, the chief and the foremost reason is that the economic development in the collar counties around Chicago far exceeds anything elsewhere in the state. We have counties in Illinois which, in a single decade, have more than doubled their assessed property valuations per pupil, but we also have counties in Illinois which, in a single decade, have absolute losses in assessed valuation per pupil. Illinois is rapidly becoming a society of "haves" in the northeastern part of this state and "have nots" everywhere else. It would be naive to think that this tremendously unequal economic development within this state does not affect all aspects of public life including public education. Not long ago, I wrote that we needed more than a "Build Illinois" plan. For southeastern Illinois I think we need a Marshall Plan.

Opponents to the constitutional amendment argue that, even if these financial facts are correct--and many opponents do concede that these financial facts are correct--this deplorable fiscal situation can be corrected by statute; therefore, we do not need the admittedly strong medicine of a constitutional amendment. I will, on my part, also concede that this fiscal situation could be corrected by statute; but, if both the Governor and the General Assembly have refused to take their medicine for the better part of two decades, I do not think there is any evidence to suggest that they will treat the illness in that manner in the present.

Comparison to the national budget balancing amendment is probably appropriate. We could also balance the national budget if we had the political will to do it. Unfortunately, we seem to lack that political will; and, we also seem to lack the political will to do anything constructive about funding education in this state. Hence, we do need the constitutional amendment to give us the necessary backbone to do the job. In this regard, it is most interesting that the leadership of the Legislative Task Force on School Finance were also the leaders in getting this amendment through the General Assembly. These legislative leaders are

recognized as the most knowledgeable persons in this area in the state, and at least a respectable number of them apparently feel that they need the support of this constitutional amendment.

Let us turn now to historical and legal reasons for supporting this amendment. I listened very closely to the debate in the House over this proposed constitutional amendment. Fortunately, I listened from the Gallery in relative safety since I did not know the Republican side of the aisle was going to attempt not only to inform me on this issue, but also to entertain me with amateur boxing. You probably read in your papers that one Republican representative actually came to blows with another Republican representative. If you don't think this issue is deeply felt in Illinois, just ask the people who were in that acrimonious two-hour Republican House Caucus. Perhaps, we are fortunate we are not in the nineteenth century and that sword canes are illegal, or at least have gone out of style.

Speaker Madigan said that we were completing the work of the 1970 constitutional convention. Now, I yield to no man in my admiration of the Speaker as a politician; and, at times, as a statesman. But, I think I can go him one better as a historian. Speaker Madigan, we are not only completing the work of the last constitutional convention, we are carrying out the mandate given to this state by the Congress of the United States in the Northwest Ordinance of 1787. Article III of the Ordinance read, "Religion, morality, and knowledge being necessary to the good government and the happiness of mankind, schools and the means of education shall FOREVER be encouraged." This responsibility was then enjoined onto the states created out of the Northwest Territory by acts of Congress in 1800, 1809, and 1818.

Five years after the Civil War, Article VIII of the Constitution of 1870 made it permanent with these words, "The General Assembly shall provide a thorough and efficient system of free schools whereby all the children of this state may receive a good common school education." And the constitutional convention of 1970 put the same charge in these words which constitute the second sentence of the present Article Ten: "The state shall provide an efficient system of high quality education." I believe the proposed amendment would take this historical movement to its logical and necessary conclusion by making education a fundamental right. But, historical development to the contrary, we must still answer the basic question, "Why make education a fundamental right?"

Before we can outline the argument for education as a fundamental constitutional right, we must answer the assertion that such a right already exists and that no amendment is needed. The average citizen probably thinks he or she does have such a right, having benefited from the existence of a public school system in this state for nearly a century and a half. For such a right to exist, however, that right would have to be stated, explicitly, in the constitution, or it would have to be adjudged to be implicit in the existing language. We are not the English parliamentary system, and we do not establish constitutional rights on the basis of "the memory of man runneth not to the contrary."

It seems clear that there is no explicit right to education since words to that effect were not present in the Illinois constitution of 1870;also they are not present in the Illinois constitution of 1970. But, it is also true that the Supreme Court of Illinois has never ruled on whether there is an implied constitutional right to education. They did not do so on the basis of the constitution of 1870, and they have not done so, at least as yet, on the basis of the constitution of 1970. Other state supreme courts, have ruled on this important question--eighteen of them to be exact--but "guidance from our sister states" is of no great avail here. Eight of these states have ruled that education is a fundamental right, but ten have ruled that education is not a fundamental right. These rulings, in other states, obviously depend upon the wording of the specific constitution in each state, and upon prior court decisions in that state.

Presently, there is on the record, one decision which holds that education in Illinois is not a fundamental constitutional right. Judge Thomas J. O'Brien of the Chancery Court of Cook County took eight pages out of his thirty-odd page decision on the state's motion to dismiss in The Committee v. Edgar to hold that education is not a fundamental right. The seventy-plus, plaintiff school districts have appealed Judge O'Brien's decision, but the O'Brien decision appears solidly grounded in case law, going back to Blaze versus Illinois, a decision of nearly twenty years ago which held that the fifth sentence in Article X, the education article, is merely hortative and does not affix any affirmative duty on the state relative to educational matters. If the O'Brien decision is allowed to stand, then the courts in Illinois will have effectively gutted the education article.

One can easily argue that if one wishes to restore substance to the education article, the only way to do that is to vote for the educational amendment on the ballot in November. Should the O'Brien decision stand, and the amendment fail, it is hard to see how there will be any constitutional rights to education left in Illinois since judicial interpretation will have then left nothing but a hollow shell of Article Ten.

The people are the ultimate and only sovereign authority in a democracy, and they must always take precedence over both the legislature and, especially, over the courts. Therefore, it is now necessary to argue the case for education as a fundamental constitutional right before that superior tribunal, the people. In taking our case to the people, we must establish a deeply philosophical basis for arguing that education should be a fundamental constitutional right and to that task I now turn.

I believe there are at least five solid reasons for making education a fundamental constitutional right. First, as John Dewey pointed out in his classic treatise, Democracy and Education, the educational system and the system of government cannot be separated. Democracy requires a system of education that is open to all and of good quality for all. All other rights contained in the constitution are simply meaningless without an adequate education. The right to vote is of little consequence unless that vote is informed and educated. The right to free speech is of little value unless that speech is made meaningful and effective by an adequate education. The right to a free press can have little consequence unless that press can be read and understood by an educated voter. Even the ancient and hard-fought-for right to a religion of one's choice can have small value unless that choice is informed.

These days, my good friends on the conservative side of the aisle make much of "choice" in education and elsewhere. I tell them that "choice" is not possible without making education a fundamental right. To those libertarians who rightly fear big government, what better resistance against the possible tyranny of big government than an informed and educated person? As to civil liberties, civil rights without education have form, but they have no substance. It is to the great credit of the Black Caucus in the House that they immediately realized this and rapidly endorsed the amendment. The same is true for the representatives of every major ethnic and minority group in Illinois.

Ultimately, Thomas Jefferson said it best, as is so often the case. In a letter to Col. Charles Yancey, in 1816, he wrote: "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be." Liberty and education are inseparable. The ten courageous Republican senators and the ten equally-courageous Republican representatives who voted with most of the Democrats to put this issue on the ballot next November know that is absolutely and unconditionally true.

Make no mistake about this, however, the vote in November will be a plebiscite on public education. Therefore, it is necessary to spell out all the other reasons for making education a fundamental right. There are, for example, very important economic reasons for making

education a fundamental right, and I am deeply grieved by the failure of the majority of the business community in Illinois--at least, to date--to support the amendment. Some local Chambers of Commerce--Rockford, I believe is the largest--have endorsed the amendment, despite the opposition of the state Chamber of Commerce. How could you possibly ask any corporation to invest in a state that would not make education a fundamental right? What kind of message would a failure of this amendment in November send to the business world outside of Illinois? Would it not say that Illinois businessmen have no concern at all for the skill levels of their workers? Would it not say that Illinois manufacturers have no knowledge of the fact that human resource investments are far more important in the economic development of this state than investments in physical resources? Would it not say that high technology is not for Illinois since we are unwilling to invest in a good secondary education that is the basis for that high technology? Unless one has come to the very cynical conclusion that there are not going to be any more Diamond Stars in Illinois and that manufacturing is henceforward to be conducted only in Juarez and Tijuana, I cannot understand the opposition of the business and manufacturing community to this amendment.

The plain fact of the matter is that Illinois cannot survive with masses of unskilled and uneducated labor. Nor can it survive if business prosperity and economic development is confined to a narrow corridor north of I-80. Failure of the amendment will not hurt the wealthy suburbs, but it may well condemn many other Illinois counties to a third world existence in which their work forces can not participate in a technological society. As many economists of the "human capital" school have pointed out, one either has a highly skilled and educated work force to drive ones economy, or one has a cheap labor supply. If one has neither, then failure in the world of international economic competition is certain. Our highly-valued free market system will simply collapse unless there are both educated consumers and educated producers to make that informed market. But, I am not without hope here. I think it far more likely that the business community simply has not understood yet what is really at stake in November, and that, when they do understand that making education a fundamental right is essential to economic development, they will yet rally to this cause. Nothing but stagnation, low levels of employment, and grim despair awaits any state that is too poor to invest in the fundamental education of its workers, and no amount of high-priced public relations work will cover up that fact.

The third reason for making education a fundamental right is sociological in nature. Education is the glue that holds together this society, which consists of many heterogeneous and separate parts. Sometimes, as we have tragically seen in Los Angles, that glue weakens and society shatters. I cannot in all good conscience stand here and tell you that if you make education a fundamental right we will never have another race riot. I wish I could, but I can't. However, I can tell you, with absolute certainty, that a society that is open to upward social mobility is a society that is far more durable and far more peaceful than one that is closed to upward social mobility. Making education a fundamental constitutional right holds out an open hand to the children of the disadvantaged and the minority groups of this country. People who have a stake in society do not go around burning that society down. It is the person that does not have a stake in the society that turns to drugs, mayhem and violence. Education is still the melting pot, and, without the melting pot, the meal is not digestible.

I have already indicated to you my fourth reason for making education a fundamental constitutional right. The record of the last 15 years clearly shows that the legislature and the executive branch will not provide an adequate safely net for many Illinois school children. We clearly need the intervention of the judicial branch. The Opposition argues that, if we amend the constitution, it will result in extensive litigation of that new amendment. They say the new amendment will be a full-employment bill for lawyers. I find this a very strange argument. Of course the new amendment will be litigated. The proposed wording was selected with that very eventuality in mind. No constitution interprets itself. That is what American courts are for, at

least since Marbury v. Madison. The Baron de Montesquieu designed, and the founding fathers put into effect, a separation of powers between the executive, the legislative and the judicial. The Illinois General Assembly does not have unlimited sovereignty, as does the British Parliament. Matters of public policy are hammered out between the three branches of government. Our independent judiciary has a extremely important role to play in these matters. No less than 40 other states have litigated their education articles. Why would we think we should be any different? Lawyers have been the life blood of democracy since the Republic was established. If the proposed amendment helps them with their livelihood, I see no real problem in that.

Finally, one establishes education as a fundamental right simply in order for this Republic to survive. Arnold Toynbee, the great British historian, argued that societies are destroyed by two processes. Either they are torn apart from within or they are pushed over from outside. Like Aristotle, Toynbee believed that class struggle was the cause of the demise of many civilizations, but he also believed that Karl Marx was wrong about the inevitability of that struggle. Aristotle, in his treatise, Politics, written nearly 2000 years ago, argued that any body politic is more stable and more lasting if it has a large middle class. Establishing education as a fundamental right will contribute to the creation of that large middle class. With that large, well-educated middle class comes security and stability. Without it, the poor get poorer and the rich get richer, and, sooner or later, the body politic is torn into shreds. Even an aristocracy, Aristotle argued, was not as permanent, because eventually that aristocracy degenerated into an oligarchy and, as the grip of the oligarchy tightened, that also tore up the body politic.

As for being pushed over from outside, I do not need to remind anyone in this room of the competition faced by both Illinois and the United States by a United Europe, lead by Germany, and by Japan--both bent upon establishing economic supremacy where they could not establish military supremacy. Ultimately, the argument is reduced to strictly Spenserian survival-of-the-fittest terms. You will either make education a fundamental right, or you will yield to those states and those nations who are willing to do so.

If I am correct in my analysis of the five reasons for making education a fundamental right, then the opening question of the debate in the House--which was, "Mr. Speaker how much will all of this cost?"--looks almost trivial and irrelevant. The answer Speaker Madigan might have given was, "You can no more put a price on this fundamental right than you can on your other fundamental rights. Tell me what price to put on freedom of speech, a free press, your voting rights, and I will then put a price on education as a fundamental right." However, it was a question honestly asked, and I'm too much of a Scot not to try to give it an honest reply.

From now until election day, we can expect to hear diverse cost estimates on the amendment. The proponents will "low ball" it, and the opponents will "high ball" it. The Opponents current radio ads, for example, call it the "blank check amendment." Even though I am on the proponents side, I am willing to put the cost at well over $1.2 billion in new state dollars. Other proponents put the cost at $1.8 billion. I think it will take that much to level-up the low-spending districts and to assure every child an adequate education, no matter where he or she lives. To be sure, that's an awfully lot of money, but remember we are also paying here for almost two decades of neglect. It is ironic that the one thing that makes it possible to raise that kind of money is the fact that our tax burden relative to other states is as low as it is. I believe that we can raise the money necessary to establish education as a fundamental right for as low as a one percent increase in the individual income tax rate; that is, to go from the present three percent to four percent in the current individual income tax rate. I will admit, of course, that other governmental services also need funds, and that this need for funding other services might push the amount over the four percent level. However, it should be sharply

noted that we can go all the way to five percent in the individual income tax without getting out of line with other major northern states. Minnesota, Michigan, and Wisconsin are all at that level.

Nor do we need necessarily to raise the rate on corporate income tax. The Opposition argues that the amendment would cause huge increases in business taxes. I do not think that is at all proven. In the first place the constitution does not say that the ratio between the individual and corporate rate must be 8 to 5, it says rather that the ratio cannot be GREATER than 8 to 5. I am just as concerned as anybody else is over the migration of industry out of Illinois, but, as I have indicated earlier, I think that migration of industry will be far, far greater with a poorly-educated labor force than with higher tax rates. If the price of business support for the amendment is to agree to no increase in the corporate income tax rate, then that agreement should, in my judgment anyway, be made right now. Nor am I at all certain that a movement away from the property tax and toward the income tax would be detrimental to Illinois business. I strongly believe that, at least in the longer run, the amendment would indeed affect that shift of tax burden from the property tax and to the income tax. One serious analytical problem we have here is that no one seems to know what percentage of the individual income tax is paid by sole proprietorships and partnerships; therefore, most are unclear about what the consequences really are for business of shifting the burden for K-12 education toward the income tax and away from the property tax.

Almost all analysts agree that Illinois depends far too much on the property tax to support K-12 education. By the most recent federally-collected figures we are 15th among the states in property tax revenue per student and that ranking has been rising. By contrast, we are 38th in state revenue per student and that ranking has been dropping. A vote "No" on the amendment will tell the General Assembly that business as usual can be carried on and that there is no pressing need to increase state revenue per pupil. The local school boards will then turn to the local property tax and raise the rates yet again, where they can do so. They must do this, because, unless one imagines that we can somehow attain zero inflation, those boards will need to get the money to offset the cost of inflation somewhere. If the state and federal governments do not provide it, then they must look to local taxpayers. Actually some of the more affluent districts in the counties adjacent to Cook will feel the squeeze perhaps more than some the poorer districts since, by recent legislation, those districts are restricted to raising their property tax extensions no more than the cost of living. Seen in this light, a vote "No" on the amendment is a vote for increased local property taxes, and that is a vote many groups--older voters on fixed incomes, younger first time home owners, small businessmen, and farmers--can ill afford.

This November, the people of Illinois will make the most important decision they have ever made since the establishment of public education in this state in the middle of the last century. Therefore, for the sake of all segments of the society--for labor, for farmers, and, yes, for business and industry, as well as for all citizens of all races, creeds or ethnic origins, and especially for all of the children of this state--I urge you to vote YES on the constitutional amendment. By doing so, you will send a message to the entire world that the citizens of the great State of Illinois still believe in the American Dream of the log cabin to the White House. The Land of Lincoln can surely do no other. Make education a fundamental right and insure the prosperity and stability of this society for generations yet unborn. To do anything less will be to deny your political heritage and to condemn your children to less of a life than you, yourself, enjoy. That cannot be. That cannot be.

EULOGY IN A COUNTRY SCHOOL YARD
November 21, 1992

In the course of a long, professional life, I have preached many sermons on inequalities in educational services in Illinois, but I have never before delivered a eulogy. I intend to rectify that omission right now. For I have come to the very sad conclusion that any hope of doing anything substantial about the disparities that Jonathan Kozol has graphically and eloquently described in his book, Savage Inequalities, is simply dead in Illinois, at least for the near future, and the dead are deserving of a proper lament. Therefore, this speech is quite sad, and I give full leave and permission for those of you who do not wish to be depressed to exit the room for more cheerful environs, such as the nearest watering hole.

When I agreed to this assignment I had hoped to come before you with a plan and a remedy for the inequality problems that Jonathan so vividly describes. But that plan rested on the passage of the now-deceased educational amendment. I had hoped, along with apparently a little over 57% of the Illinois electorate, that by making education a fundamental right, we could level up expenditures in Illinois, thus removing the gross inequalities that have troubled education in Illinois for more than eight decades. I will not here retrace the steps by which that noble effort failed. But I hope to make it clear in the course of my remarks that the amendment was the one best chance we had of a relatively quick solution to the equity problem. Parenthetically, I still think it is worth a shot in other states, especially in those states in which the education article of their constitutions can be strengthened by a direct petition of the people. That of course, was never an option in Illinois.

Instead, I find myself in the same situation that Winston Spencer Churchill found himself in May of 1940 and like him I can only repeat, "I have nothing to offer but blood, toil, tears, and sweat." Or perhaps with Garibaldi I should proclaim that the future holds nothing more than "hunger, thirst, forced marches, battles and death." To continue with the military analogy, we were trying with the constitutional amendment to turn the opposition's flank in a swift cavalry move. We are now, sad to say, forced to settle into hand-to-hand, trench warfare, and that is not a pleasant prospect.

In the event that some member of the audience might have been living on the planet Mongo for the last decade or so, I suppose I should at least outline the educational inequalities of which we speak. They are two quite different and distinct types of educational inequalities. Authors, like Jonathan Kozol write of the inequalities inherent in urban ghettos, of the deprivation of the concrete jungle, of the shameful inequalities that are often colored by racial overtones. Indeed, these are severe, and I cannot with my poor rhetorical powers improve on the pages of Savage Inequalities. If you haven't read this book, you cannot claim to be literate concerning the problems of public education in Illinois. But there is another inequality of which Jonathan did not write, because it is such a different subject and it was not his task to explore that particular inequality. I speak of the inequalities found in rural ghettos. Fortunately, others have taken up this subject and I commend most strongly to you, Ohsa Grey Davidson's fine little book entitled, Broken Heartland.

For a number of reasons, the problem of the rural ghetto is not nearly as well known as the problem of the urban ghetto. First, there are simply fewer people involved. For decades, small towns in Illinois and in other midwestern states have been losing population. Thus, fewer people are affected by the growing impoverishment of the rural village. Second, the victims of rural ghettoization are often older citizens, not younger citizens, although there are a number of younger students trapped in these small towns that are undergoing an atrophy that is appalling in its rapid onset. Third, these victims are not minorities, they are WASPs–poor WASPs, to be

sure--but they are still WASPs. Consequently, there is no "suspect classification" from which they can launch an attack to secure their constitutional rights. Finally, due to the declining rural population, they cannot mount the same kind of attack in the legislature that the more populous areas of the state can muster. They don't have enough votes; therefore, they are overlooked.

The situation of the rural poor is no less pathetic than that of the urban poor. Davidson describes a farm foreclosure sale in rural Iowa only a few years ago. The family dog had died on the day before the foreclosure and the beaten and bedraggled farm wife turns to a neighbor and says, "Where do you bury your dog when you've lost your farm?" The social problems of the collapsing farm communities are also of staggering proportions for the elderly. Where do you go when that last doctor leaves town? What do you do when the rural community hospital files for bankruptcy? How can you live when the last grocery store pulls down its shade and turns out its light? Long before, of course the rural bank will have gone under, or, more likely, merged. In fact, that is often the final financial blow, because the new bank calls in the old loans and starts the downward spiral that results in more plywood than glass in what once was the "downtown" area of many a small town in Illinois. Small wonder that rural Illinois school districts resist reorganization and consolidation. They are hanging on to their schools and their churches as the last vestiges of community life in a vortex that is pulling them all down, down to oblivion.

Educationally, there are many implications of all of this. In urban areas, the costs of trying to offset gang violence, of trying to hold one's own in competition with drug dealers, of trying to provide simple security for life and limb cut deeply into available budgets for education. It is not known for certain by any expert just how much expenditure is needed to support those actions taken within the school to counteract the forces outside the school in urban areas. An old rule of thumb was that compensatory education programs cost roughly twice as much as "ordinary" education, but that was mostly guesswork. In rural areas, on the other hand, the educational ramifications are often limited curricula and outdated instructional materials, and in buildings which are not coming close to meeting the life-safety codes of the state.

In stark contrast, the good life is led in many suburbs and in many medium-sized, independent cities in Illinois. Oh, there are educational problems in the suburbs and medium-sized cities, all right, but they are on an entirely different scale than are to be found in the urban and in the rural ghettos. In fact, in a remarkable, new book, entitled The Culture of Contentment, an old mentor of mine, John Kenneth Galbraith, points out that this is precisely the core of the problem. The contented majority, who are now found in the suburbs, see little reason to tax themselves to come to the aid of those in the urban and rural ghettos. It is worth quoting Galbraith directly:

> In the past, it is clear the contented and the self-approving were a small minority in the national entity; left outside were the majority of the citizenry. Now, in the United States, the favored are numerous, greatly influential of voice and a majority of those who vote. This, and not the division of voters as between political parties, is what defines modern American political behavior.

Elsewhere, Galbraith says:

> From the foregoing comes the broad attitude toward taxes in our time, and, in substantial measure, toward government, in general. The fortunate pay; the less fortunate receive. The fortunate have political voice; the less fortunate do not. It would be an exercise in improbable charitable attitude were the fortunate to respond warmly to expenditures that are of benefit to others.

I cannot imagine a more succinct explanation of why the educational amendment failed in Illinois than that provided by Professor Galbraith. Some suburbs did vote up to 45% for the amendment, so perhaps there is more "charitable attitude" out there than my old professor thinks.

All of this duly turns up on the quantitative studies that we conduct at the Center for the Study of Educational Finance at Illinois State University. Most of you know what those studies show. To refresh your memory they show a closing of the gap in expenditure differentials in the early 1970s, followed by a long increase in educational disparities right up to the present moment. There has been some slight improvement in elementary districts, as opposed to high school and unit districts, but the increase in expenditure inequalities has been rather general since 1976. The studies also show the decay of spending in Illinois relative to other states. There are various findings here, depending on the specific measurement selected, but, in general, we find a movement downward for Illinois relative to other states. At present, we rest near the mean for the nation, as a whole, in either expenditures per pupil or in revenue per pupil. We spend more in local revenue per pupil than many states, but we also spend less in state revenue than most states. We are not a Kentucky nor an Arkansas and our problem is not so much in adequacy as it is in equity. Many of our schools, and they are mostly suburban schools, are adequately financed. Many of our schools, and they are often rural schools, are inadequately financed. The urban schools have their special problems of operating in environments that call for funding beyond the amounts needed in other areas. There is no question that we can document with financial statistics the problems made so vivid by the Kozol and the Davidson prose.

There is also not much doubt that our equity problem is not stationary, but is growing. Our studies clearly show that property valuation disparity is still expanding in Illinois. In the collar counties around Chicago, valuation has been driven up by a high-tech, industrial corridor that continues to grow, and by speculation in the residential markets. By contrast, rural valuations continue to remain stagnant, although there has been some slight upward development in some rural areas. Surely, it is this inequality in regional economic development that is the root cause of our equity problems in education. However, there may be some cause for concern in the contented suburbs. Calls for tax ceilings by discontented suburbanites are increasing and a property tax revolt of major proportions is not improbable in Suburbia. The residential real estate bubble might also burst at some point, and there would surely be massive discontent should that occur. We shall return to the sources of suburban discontent at the conclusion of this paper.

I turn now to the sources of my pessimism over what if anything can be done about the problems that Kozol and Davidson so vividly portray. With the failure of the educational amendment in Illinois, there are only two other possibilities of solving the equity problem. One is with the courts, represented at present by the litigation entitled The Committee v. Edgar. The second is through the legislature, represented at present by the efforts of the Task Force on Educational Finance. I cannot be optimistic about either one. I also hope that I am dead wrong about this. No one, no one at all, would be happier than myself to find that I preached a eulogy that was not needed. But I doubt it. Let us first turn to the court case.

I am still all in favor of this litigation. I even have now some empirical proof that these court cases do result in better state funding and in some reduction in disparity among school districts in those states which bring this type of litigation. In a piece of research which is being considered by a national journal, researchers at the Center for the Study of Educational Finance offer proof that states which have a history of litigation make greater gains in state funding than those which do not have litigation. Also, there is some limited proof that this litigation, at least, contributes to a reduction of expenditure disparities between school districts. The pressure of the court case is, therefore, beneficial, and there is some financial pay-off to districts who

support this type of litigation. This type of litigation is not at all simply a full-employment bill for lawyers, as some have cynically suggested. However, with that said, there are still some major limitations on this strategy for solving the equity problem.

In the first place, a review of cases around the country does not give one a great deal of encouragement. Despite the flurry of victories in Montana, Kentucky, Texas, and New Jersey, now, plaintiffs appear to have hit a decided "dry spell" in terms of litigation success. Minnesota, eventually, may turn out to be a win by plaintiff at the state supreme court level, but plaintiff has also been reversed in Tennessee, and the cases have been withdrawn in Indiana and in Kansas. The Missouri trial is also moving slowly. Granted, it is hard to tell who won or lost when the settlement is "out of court," as appears to be the case in Indiana and in Kansas. Also, since there are over 20 actions going forward at one stage or another, it is difficult to say precisely who is ahead--short of a state supreme court decision in the state and we have not had any of those lately.

(Since this was written, plaintiffs have won at the Supreme Court level in Tennessee and at the circuit court levels in North Dakota, Missouri and Alabama. So, the outlook on litigation is currently a little brighter from the plaintiffs' point-of-view.)

In Illinois, The Committee v. Edgar is currently on appeal to the First Appellate. In the opinion of many, Judge O'Brien wrote a tight, logical decision which will be difficult to reverse. Difficult, but not impossible. At the circuit court level, Plaintiff never got a chance to argue the facts, because O'Brien interpreted case precedent in Illinois to provide no remedy-at-law for the complaint. But, on appeal, the facts go forward with the complaint, and higher courts have an opportunity to weight both the facts and the law. Again, as in other states, these matters are rarely decided by circuit or appellate courts, they are decided by the state supreme courts and the Illinois Supreme Court has not been given an opportunity to rule upon this matter. There are many imponderables here, including a change in composition of the high court in Illinois. One immediate problem is whether the school districts bringing the action can stay the course until the state supreme court has had a chance to act. They may, but if they do, it is because, with the failure of the amendment, they have come to the conclusion that this is the only show in town. The long, legal action is surely a prime example of the "trench warfare" to which I alluded at the opening of my remarks.

The second strategy lies with strong support of the Task Force recommendations as they go to the General Assembly. There is no doubt that, if the $4,000 foundation level remains the center of the Task Force recommendations, then a major, major step forward will have been taken for those seeking to solve the equity problem in Illinois. But the Task Force recommendations have not even gotten out of the Task Force, itself, and, when they are introduced, they face a difficult life on the floor of the legislature, especially in the upper house of the General Assembly. Demographic facts finally came home to Illinois in the last election; the suburbs now have a far greater voice in public policy matters than they did before that election. As we have already argued, the suburbs are relatively contented with educational matters the way they are. They are not strongly predisposed to transfer wealth from themselves to the rural and urban units which are most in need.

Furthermore--and this is most important--regardless of who is in control of the House or the Senate, the huge costs of medical care are now bearing down on the states in such a way that there may not be very much funding available for education, anyway. The single, financial statistic that amazes most citizens with whom I talk, on the surface, has little to do with educational finance. It is the fact that last year, for the first time, the leading state expenditure became the state's contribution to Medicaid. That expenditure proved to be slightly greater than all of the state expenditure for K-12 education and twice as great as the expenditure for all of higher education. This is the "entitlement" problem that Senator John Maitland spoke so

eloquently about in the debate over the educational amendment. It may have been postponed for the moment by a special tax on hospitals and nursing homes–a most unpopular and regressive tax, by the way–but the problem is still there. If– very large If–President-Elect Clinton is able to find a federal solution to the health care problem, then perhaps some of that pressure on the state government might be lessened, but this is still very speculative. Contributing to everyone's gloom is the knowledge that a choice between Medicaid and Education sets one generation against another. Worse yet, it sets one group of poor people against another group of poor people.

Is there any way out of this malaise? Probably, but the society may have to get a lot sicker before it gets better. A severe recession would push over the edge both the folk in the urban and rural ghettos. The people in the urban ghettos would likely take to the streets to fight as they did in the 1960's; and this time they might have allies in the more rural parts of the state who, if I am right, are fed up with being overlooked. A severe recession might also prove to the contented suburbs that the work force was so decaying in the urban and rural areas that they would finally have to act for their own preservation. When the products of the urban and rural schools are so badly educated that they cannot be utilized in the commerce and industry managed by those who live in the contented suburbs, we may finally have action. When the corporate retrenchments start falling on suburbia, for whatever reasons; when that $100,000 annual income and that $500,000 home is threatened, then the contentment that Galbraith speaks of will simply disappear and the contented majority will melt like the snow on an April morning.

Now, I sincerely and devoutly wish that it did not have to be this way. But, during the amendment debate, many of us talked at great length to quite a number of audiences about the fundamentality and importance of educational rights to all civil and constitutional rights. We did not, at least in my judgment, make a great deal of progress. I still believe those arguments. I still believe that Aristotle and Jefferson and Thomas Mann and John Dewey were right in that a democracy cannot long endure without an open and strong public school system. But then, Aristotle, Jefferson, Thomas Mann and John Dewey don't seem to command the attention of as many as would be desirable. The public wanted to talk about their pocketbooks much more than they wanted to talk about democratic theory. Mark Shields of Gergin and Shields may very likely have had it right: "Philanthropy," said Mr. Shields, "is not a moving force in American politics."

Nor should one unduly condemn senators and representatives from suburban areas for not supporting legislation intended to shift resources to urban and rural locations. They have a right, maybe a responsibility, "to vote their constituency." However, they also have a duty to protect their constituencies from future harm. Somehow, we have to convince the legislator and the voter in the suburbs that there really is a whirlpool out there. There is a big vortex in the central cities and there are smaller whirlpools, but just as dangerous, in the rural parts of the river. We must navigate our way out of this or all of us will assuredly drown.

APPENDIX

STATUS OF SCHOOL FINANCE CONSTITUTIONAL LITIGATION
Compiled by John A. Dively and G. Alan Hickrod
April 1993

I. Plaintiffs won at state supreme court level: (6)

Wyoming	Washakie v. Hershler, 1980
Arkansas	Dupree v. Alma School District, 1983
Montana	Helene School District v. Montana, 1989
Kentucky	Rose v. The Council, 1989
Texas	Edgewood v. Kirby, 1989
Tennessee	Tennessee Small School Systems v. McWherter, 1993

II. Plaintiffs won at the state supreme court level, but further compliance litigation was also filed: (5)

California	Serrano v. Priest, 1971, 1977;	Rodriguez v. Los Angeles
West Virginia	Pauley v. Kelly, 1979; 1988	
New Jersey	Robinson v. Cahill, 1973;	Abbott v. Burke, 1990
Washington	Seattle v. Washington, 1978	Tronsen v. State of Washington, 1991
Connecticut	Horton v. Meskill, 1977;	Sheff v. O'Neill, 1992

III. Plaintiffs lost at supreme court level and there have been no further complaints filed or further complaint lost also: (9)

Maine	Sawyer v. Gilmore, 1912	
Michigan	Milliken v. Green, 1973	
Georgia	McDaniels v. Thomas, 1981	
Colorado	Lujan v. State Board of Education, 1982	
Maryland	Hornbeck v. Sommerset County, 1983	
North Carolina	Britt v. State Board, 1987	
South Carolina	Richland v. Campbell, 1988	
Wisconsin	Kukor v. Grover, 1989	
Oregon	Olsen v. Oregon, 1979;	Coalition for Ed. Equity v. Oregon, 1991

IV. Plaintiffs lost at supreme court level, but there have been further complaints filed: (7)

Arizona	Shofstall v. Hollins, 1973	Roosevelt Elem School Dist 66 v. Bishop, 1991
Oklahoma	Fair School v. State, 1987	
Pennsylvania	Dansen v. Casey, 1979; 1987	
	Pennsylvania Association of Rural and Small Schools v. Casey, 1991	
Ohio	Board of Education v. Walter, 1979	Howard v. Walter, 1991
	Thompson v. State of Ohio, 1991	DeRolph v. State, 1992
New York	Board of Education v. Nyquist, 1982; 1987	
	Reform Educational Financing Inequities (R.E.F.I.T.) v. Cuomo, 1991	
Idaho	Thompson v. Engleking, 1975;	Frazier et al. v. Idaho, 1990
Louisiana	School Board v. Louisiana, 1987; 1988	
	Charlet v. Legislature of State of Louisiana, 1992	

V. Litigation is present, but no supreme court decision has been rendered: (14)

Illinois*	The Committee v. Edgar, 1990
North Dakota**	Bismark Public Schools v. North Dakota, 1989
Indiana	Lake Central v. Indiana, 1987 (8/4/92 Case withdrawn)
Missouri**	The Committee v. Missouri Lee's Summit P.S.U. v. Missouri, 1990
Alabama**	Alabama Coalition for Equity v. Hunt, 1990; Harper v. Hunt, 1991
Alaska*	Matanuska-Susitna Borough v. Alaska, 1989
Minnesota**	Skeen v. Minnesota, 1988
Massachusetts	Webby v. Dukakis, 1988; Murdoch v. Weld, 1990
South Dakota	Bezdichek v. South Dakota, 1991
New Hampshire*	Claremont, New Hampshire v. Gregg, 1991
Virginia	Alleghaney Highlands v. Virginia, 1991 (Case withdrawn 8/92)
	Scott v. Virginia, 1992
Nebraska*	Gould v. Orr, 1990
Rhode Island	City of Pawtucket v. Sundlun, 1992
Kansas	(Consolidated)
	Unified School District 229, et al. v. Kansas, 1991
	Unified School District 244, Coffey County, et al. v. State
	Unified School District 217, Rolla, et al. v. State

*Circuit Court decision in favor of the defendants
**Circuit Court decision in favor of the plaintiffs

VI. No litigation is present or case is dormant: (9)

Delaware	
Florida	Christiensen v. Graham
Hawaii	
Iowa	
Mississippi	
Nevada	
New Mexico	
Utah	
Vermont	

Category A: States in which the State Supreme Court has declared that education IS a fundamental constitutional right: (9)

Arizona	Shofstall v. Hollins, 1973
Wisconsin	Busse v. Smith, 1976
California	Serrano v. Priest, 1977
Connecticut	Horton v. Meskill, 1977
Wyoming	Washakie v. Hershler, 1980
West Virginia	Pauley v. Bailey, 1984
Montana	Helena v. State, 1989
Kentucky	Rose v. the Council, 1989
Tennessee*	Tennessee Small School Systems v. McWherter, 1993

Category B: States in which the State Supreme Court has declared that education is NOT a fundamental constitutional right (10)

New Jersey	Robinson v. Cahill, 1973
Michigan	Milliken v. Green, 1973
Idaho	Thompson v. Engleking, 1975
Oregon	Olsen v. State, 1976
Pennsylvania	Dansen v. Casey, 1979
Ohio	Board v. Walter, 1979
New York	Levittown v. Nyquist, 1982
Colorado	Lujan v. Colorado, 1982
Georgia	McDaniel v. Thomas, 1982
Arkansas*	Dupree v. Alma, 1983

Catagoy C. Lower court decision on education as a fundamental right

1. States in which a circuit or appellate court has declared that education IS a fundamental right (4)

Missouri	Committee v. Missouri, 1993
Minnesota	Skeen v. Minnesota, 1992
North Dakota	Bismark Public Schools v. North Dakota, 1993
Washington	Tronsen v. State of Washington, 1991

2. States in which a circuit or appellate court has declared that education is NOT a fundamental right (1)

Illinois	Committee v. Edgar, 1992
New Hampshire	Claremont, New Hampshire v. Gregg, 1991

*States in which the funding system failed to pass the "rational basis" test of the equal protection clause.